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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/517,426	03/02/2000	Veltmans Wilhelmina Helena Maria	5475.00	4911

7590 12/31/2001

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1001 Pennsylvania Avenue NW
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EXAMINER

MILLER, EDWARD A

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 12/31/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/517,426

Applicant(s)

MARIA ET AL.

Examiner

Edward A. Miller

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,9-12,14-16,18,20,21,23,25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,9-12,14-16,18,20,21,23,25 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1,2, 9-12,14-16, 18, 20, 21, 23, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Subramanian et al. in view of Mangum et al., and Somoza et al. I and II.

Subramanian et al. teach the basic invention of particle precipitation to form small size particles. Therein, as in the Abstract, precipitation is performed to form small crystals with the benefit of ultrasonic waves. Ultrasonic background is given from about col. 3, line 37- col. 4, line 39, with further detail in the paragraph bridging col. 5 and col. 6. Col. 4, lines 52-62 (line 62 specifically teaching explosives), and col. 17, lines 48-56 (line 56 teaching explosives), make it clear that the invention method is useful to make small size crystals of explosive ingredients. Further detail is taught throughout Subramanian et al., including in Example 12, with specific ultrasonic detail. In view of Mangum et al., and Somoza et al. I and II, it would have further been obvious to prepare specific notoriously well known explosive ingredients by such a crystallization process. In Mangum et al., col. 3, lines 30-45, ammonium perchlorate is crystallized in small sizes with ultrasonic energy, with variation of process parameters to vary the results. Indeed, it appears that Mangum et al. in Example 5, col. 8, anticipates broad claims 1, 20 and 25, which require precipitation but without any limitation as to the type thereof. As to this point, anticipation is epitome of obviousness. *In re Pearson*, 181 USPQ 641 (CCPA 1974). In Somoza et al. I, col. 2, lines 8-49, use of ultrasonic energy during grinding is helpful to remove impurities from crystal surfaces to produce an improved product, and in Somoza et al. II, the Abstract, e.g., teaches that small size particles are less sensitive. Thus, it is perfectly clear that these processes will produce a beneficial product with small size, improved purity and reduced sensitivity. Variation of specific notoriously well known ingredients, or variation of well known parameters would have been obvious for the expected

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reasons taught in the references. It is well settled that optimizing a result effective variable is well within the expected ability of a person or ordinary skill in the subject art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980), *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955).

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

4. Any inquiry concerning either this or an earlier communication from the Examiner should be directed to Examiner Edward A. Miller at (703) 306-4163. Examiner Miller may normally be reached Mondays through Thursdays, from about 9:30 AM to 7 PM.

If attempts to reach Examiner Miller by telephone are unsuccessful, his supervisor Mr. Carone can be reached at (703) 306-4198. The Group fax number is (703) 305-7687.

If there is no answer, or for any inquiry of a general nature or relating to the application status, please call the Group receptionist at (703) 308-1113.

Miller/em
December 27, 2001



EDWARD A. MILLER
PRIMARY EXAMINER